

HIGHER EDUCATION

SECRETARY OF HIGHER EDUCATION

Rules and Procedures for Implementation of the Building Our Future Bond Act

Proposed New Rules: N.J.A.C. 9A:18

Authorized By: Rochelle Hendricks, Secretary of Higher Education.

Authority: N.J.S.A. 18A:72A-1 et seq. and P.L. 2012, c. 41.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-020.

Submit comments by March 23, 2013 to:

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The agency proposal follows:

Summary

In August 2012, the Building Our Future Bond Act, P.L. 2012, c. 41, (Bond Act) was enacted, and New Jersey's voters approved a ballot question in the November 6, 2012 general election, authorizing the State to issue general obligation bonds in the aggregate principal amount of \$750 million. Funds from the Bond Act will be used to provide New Jersey public

and private colleges and universities with matching grants to build, equip, and expand higher education facilities to increase academic capacity and to provide direct benefits to students.

The primary purpose of the Bond Act is to provide institutions with the financial resources to increase their academic capacity to serve the significant growth in the New Jersey student population. The Bond Act will provide institutions with the opportunity to construct and/or expand classrooms, laboratories, libraries, computer facilities, and other academic buildings.

The Secretary of Higher Education is proposing the rules set forth below pursuant to the Administrative Procedures Act, P.L. 1968, c. 410 (N.J.S.A. 52:14B-1 et seq.) to implement the provisions of the Bond Act:

The proposed new rules for the Building Our Future Bond Act are as follows:

N.J.A.C. 9A:18-1.1 sets forth the chapter's purpose and authority.

N.J.A.C. 9A:18-1.2 provides definitions pertinent to the rules and includes a cross-reference to the definitions section of the Bond Act, P.L. 2012, c. 41, §3.

N.J.A.C. 9A:18-1.3 specifies how the funds will be allocated.

N.J.A.C. 9A:18-1.4 presents the project funding eligibility for grants from the Bond Act and requires institutions to contribute 25 percent of the cost of the project.

N.J.A.C. 9A:18-1.5 delineates the grant application process, including the required contents of grant applications.

N.J.A.C. 9A:18-1.6 presents the application review and approval process, including the criteria the Secretary will use in reviewing and evaluating applications for grants.

N.J.A.C. 9A:18-1.7 delineates the grant authorization process.

N.J.A.C. 9A:18-1.8 delineates the application of bond proceeds.

N.J.A.C. 9A:18-1.9 delineates payment of the grant requirements.

N.J.A.C. 9A:18-1.10 delineates the annual reporting requirements.

As the Secretary has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

New Jersey's economic competitiveness and prosperity are directly related to the quality and capacity of its colleges and universities. Higher education is the foundation of this State's economic well-being, in addition to being critical in the realization of individual success. More than 440,000 students are enrolled in New Jersey colleges and universities and demographic projections indicate that New Jersey will experience a significant growth in its population of 18- to 24-year olds. According to the Report of the Governor's Task Force on Higher Education issued in December 2010, New Jersey leads the nation in net outmigration of college bound students, losing about 30,000 first-year students a year, while admitting approximately 4,000 students from other states. The task force also highlighted the urgent need to stem the tide of the brightest high school graduates leaving the State to attend college. The Bond Act will provide institutions with the resources to address the lack of academic facilities, such as classrooms, laboratories, and libraries that are necessary to educate this increased student body, provide the capacity necessary to stem the outmigration of talented students, and ensure the educated workforce necessary to retain and attract business and industry.

Economic Impact

Higher education plays a vital role in the economic development of the nation and the State of New Jersey by providing education and training for the workforce of the future, by advancing knowledge and technology through research, and by providing lifelong learning

opportunities for all citizens. The Bond Act is a significant investment of the State's resources to increase the capacity of the academic facilities of New Jersey's public and private institutions of higher education, which are necessary to ensure and advance the State's economic growth and prosperity in this knowledge-based global economy. New Jersey has not had a voter-approved higher education general obligation bond act in 24 years and the deferral of the capital maintenance needs of higher education buildings has inhibited the development of world-class research and academic facilities that are necessary to produce the next generation of leaders and workers for businesses and industry. The academic facilities financed through the Bond Act will encourage innovation and prepare students for advanced research, as well as serve as a resource for businesses that will partner with faculty and students to create, innovate, explore, and grow. The Bond Act will also boost the economy of the State by providing hundreds of jobs for multiple years in construction, engineering, and architecture, strengthen higher education in New Jersey, and increase the number and quality of our graduates.

Federal Standards Statement

The proposed new rules do not require a Federal standards analysis under Executive Order No. 27 (1994) because the Bond Act was established by New Jersey legislation, is wholly supported by State appropriations, and is not subject to any Federal requirements or standards.

Jobs Impact

The proposed new rules implementing the Bond Act govern only the process eligible institutions must follow to receive approval for projects supported with bond act moneys. There will be short-term and long-term job increases associated with funded projects. The proposed new rules will not result in the loss of any jobs.

Agriculture Industry Impact

The proposed new rules will have no direct impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not apply to small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules pertain strictly to public and publicly funded private colleges and universities in New Jersey, none of which qualify as a small business.

Housing Affordability Impact Analysis

The proposed new rules do not require a housing affordability analysis because the rules govern the implementation of the Bond Act and there is an extreme unlikelihood that the new rules will evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The Secretary believes there is an extreme unlikelihood that the proposed new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, because the rules govern the implementation of the Bond Act.

Full text of the proposed new rules follows:

CHAPTER 18

RULES AND PROCEDURES FOR IMPLEMENTATION OF THE BUILDING OUR

FUTURE BOND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

9A:18-1.1 Purpose and authority

This chapter implements the Building Our Future Bond Act, P.L. 2012, c. 41, an act authorizing the issuance of \$750 million in general obligation bonds to finance higher education capital projects for increasing academic capacity at New Jersey's public and private institutions of higher education.

9A:18-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at P.L. 2012, c. 41, §3.

“Act” or “Bond Act” means the Building Our Future Bond Act, P.L. 2012, c. 41.

“Construction ready” means the extent to which the planning and design work have been completed and construction is able to begin, and the degree to which a project shall be completed expeditiously once begun. An evaluation of whether a project is construction ready shall include the status of the design work, project site readiness, zoning and permitting approvals, as well as the anticipated timeframe during which the project will be completed, and the pacing of related construction.

“Cost-effectiveness” means the degree to which a project produces a positive economic analysis when considering the construction, operating, and maintenance expenses, compared to the project's resultant facilities and/or equipment, the life span of the facilities and/or equipment, facility usage and capacity, user productivity, and, where appropriate, such attributes as aesthetics, historic preservation, security, and safety.

“Matching funds” means funds that are allocated by the institution for a specific project for which grant funds are used, which are equal to 25 percent of the total cost of such project and which are generated from institutional sources, other grants, institutional borrowings, or other sources as permitted in the grant approval process. Notwithstanding anything in this definition to the contrary, grants from State government sources may not be used to satisfy the matching requirement in N.J.A.C. 9A:18-1.4(a)4.

“Project grant” or “grant” means a grant of monies from bonds issued under the Bond Act to fund a project approved pursuant to N.J.A.C. 9A:18-1.6 and for which a project-specific appropriation has been made.

9A:18-1.3 Allocation of funds

(a) Grants from the Bond Act shall be used only to fund projects for increasing the academic capacity at New Jersey public and private institutions of higher education.

(b) Bonds of the State of New Jersey are authorized to be issued in the aggregate principal amount of \$750,000,000 and shall be allocated as set forth in P.L. 2012, c. 41, §5.

(c) For any grant for a project approved by the Secretary, which is financed by bond funds set forth in (b) above, the grant shall support 75 percent of the cost of the project and the public and private institutions of higher education shall provide matching funds to support 25 percent of the cost of the project.

9A:18-1.4 Project eligibility

(a) The Secretary shall consider for approval a grant from bond funds available or expected to become available pursuant to the Bond Act provided that the institution meets the following funding eligibility criteria. The institution must:

1. Have an up-to-date long-range facilities plan approved by the governing board that details the facilities needs of the institution and how the institution plans to address those needs;
2. Demonstrate how the project to be financed through bonds issued under the Bond Act advances the goals of the long-range facilities plan, increases the academic capacity of the institution, and provides a direct benefit to students;
3. Demonstrate that the project is construction ready;
4. Commit to provide matching funds to support 25 percent of the cost of the project;
5. Commit to use the grant for the purpose described in (a)2 above; and
6. Commit, by resolution of its governing board, to maintaining the capital improvement funded by the grant.

9A:18-1.5 Grant application

(a) The Secretary shall consider for approval grant applications that meet the funding eligibility criteria in N.J.A.C. 9A:18-1.4.

(b) Upon approval by its governing board at a duly authorized meeting, an institution of higher education shall apply to the Secretary for a project grant from the Bond Act. The institution's application shall include the following:

1. A complete description of the project grant to be financed with bond fund moneys, including design information;

2. A copy of the institutional governing board's resolution approving the institution's application and committing the institution to support the annual operating costs of and maintenance requirements for the proposed project;

3. A copy of the institution's current long-range facilities plan approved by the institution's governing board or certification that such a plan has already been submitted to the Secretary pursuant to P.L. 2009, c. 90;

4. A description of how the proposed project addresses the institution's long-range facilities plan;

5. The estimated schedule for completing the project, including cash flow requirements;

6. Cost data for the project, along with identification of all sources of funding to be used for any costs not funded by the grant;

7. The useful life of any project, including equipment as determined either by reference to the Internal Revenue Service's Class Life Asset Depreciation Range System set forth in Revenue Procedure 87-56, as amended, supplemented, or superseded, or by appraisal of any independent engineering or accounting firm, as appropriate;

8. Certification by the institution that the project will comply with all applicable laws, rules, codes, statutes, and government guidelines, including the principles of affirmative action and equal employment opportunity, where applicable;

9. Certification by the institution that it has or will have the matching funds required pursuant to N.J.A.C. 9A:18-1.3(c);

10. Any additional information the institution deems necessary to demonstrate how the proposed project meets the objectives identified in N.J.A.C. 9A:18-1.6; and

11. Other information as the Secretary may require on a case-by-case basis and relating to a specific proposal.

(c) If the bonds issued to fund a grant are issued on a tax-advantaged basis, including tax-exempt bonds, then in order to receive project grant funding for expenses incurred before such bonds are issued, such expenses must be “reimbursable” from bond proceeds under applicable Federal tax law.

(d) Institutions shall not use as matching funds, and grant funds may not be used to reimburse, any expenditures made before the approval of a project grant award, except in the discretion and upon approval by the Secretary, as determined on a case-by-case basis, and provided that the expenditures meet the requirements of N.J.A.C. 9A:18-1.4.

(e) Grant applications shall be submitted in a format provided by the Secretary.

9A:18-1.6 Application review and approval process

(a) The Secretary shall conduct a review of the applications. Such applications will be reviewed based on:

1. The completed application bearing the earliest submission date;

2. A competitive application process whereby all applications will be submitted by a date certain and will be evaluated to determine which applications are eligible for funding and are the most qualified to receive funding.

(b) In determining whether an application shall be approved for a grant, the Secretary shall consider the degree to which the proposed capital improvement project supports the following objectives, and shall prioritize those projects that are construction ready:

1. Advancement of student education in the State of New Jersey;

2. Improvement and expansion of educational opportunities for students;
3. Promotion of academic research excellence, workforce readiness, and the enhancement of the State's academic and economic competitiveness and prosperity by assisting in the production of a highly skilled workforce;
4. Promotion of innovation and improvement in the delivery of higher education;
5. Advancement of study at all levels in science, technology, engineering, and mathematics education;
6. Consistency with the institution's educational mission;
7. Consistency with the institution's long-range facilities plan;
8. The cost-effectiveness of the project;
9. Consistency of the project with the State's goals and priorities for development and redevelopment, including the promotion of industry clusters, job and business opportunities in areas designated by the State for growth, transportation choice and efficient mobility of goods and people, and promotion of access to opportunity for all New Jersey residents;
10. Demonstrated commitment over the past 10 years to appropriate maintenance of facilities previously funded by State of New Jersey grant programs; and
11. Whether it serves the best interests of higher education in the State as a whole.

9A:18-1.7 Authorization process

(a) The Secretary shall establish a review committee comprised of representation from the Office of the Secretary of Higher Education, the New Jersey Educational Facilities Authority, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, and

an external advisor with technical expertise to evaluate project grant applications and make recommendations on funding.

(b) The Secretary shall examine the recommendations of the review committee and shall, via a written certification, approve or disapprove a project grant, pursuant to N.J.A.C. 9A:18-1.6(b), and establish the amount of the grant.

(c) The total dollar amount of a project grant approved for any group of institutions shall not exceed the allocations in N.J.A.C. 9A:18-1.3(b).

(d) The Secretary shall prepare a list of projects that meet the eligibility requirements set forth in the Bond Act and in this chapter that have been approved for funding by the Secretary, including the amount of each project grant, to the presiding officers of each house of the Legislature on a date that both Houses are in session. If the Legislature does not disapprove the list of approved project grants by the adoption of a concurrent resolution within 60 days of receipt of the list of approved project grants, the grants will be deemed to be authorized.

(e) Upon authorization of the grant pursuant to (d) above, the institution shall enter into a grant agreement with the Secretary. Funding of the project grant shall be contingent upon the institution's continued compliance with the grant agreement.

(f) Each recipient of a project grant shall provide such information as the Secretary may request regarding the use of the grant and the progress of the project.

(g) The Secretary may, in a manner consistent with the allocations provided in the Bond Act, allocate any balance in an approved grant to another approved grant:

1. If an institution determines not to undertake a project for which a grant was awarded;
2. To adjust for actual project expenses in a manner consistent with the approved grant;

3. If the project is not substantially completed and the grant substantially disbursed six months after the estimated construction completion date set forth in the grant application, as adjusted for any actual delay to the institution entering into a construction contract consistent with (e) above; or

4. If an institution fails to comply with the provisions of the grant agreement as set forth in (e) above.

(h) No reallocation shall be made pursuant to (g) above if:

1. Delays are the result of Federal, State, or local government approvals or regulatory requirements not attributable to the institution; or

2. In the sole determination of the Secretary, there are other compelling and documentable reasons.

9A:18-1.8 Application of bond proceeds

(a) The proceeds from the sale of bonds, allocated and issued pursuant to the Bond Act, shall be paid to the State Treasurer and held thereby in an interest bearing account specifically dedicated to making grants to applicants for financing the costs of approved projects.

(b) The moneys in the account are specifically dedicated and shall be used for the purposes identified in the Bond Act, however, no moneys shall be expended from the account for those purposes without the specific appropriation thereof by the Legislature.

9A:18-1.9 Payment of the grant

(a) The institution shall provide the matching funds on the schedule set forth in the grant agreement.

(b) If an institution fails to pay the matching funds as set forth in the grant agreement, the Secretary may terminate the grant agreement, whereupon no additional grant funds will be provided for the institution for the project.

9A:18-1.10 Reporting requirements

(a) The Secretary shall submit to the State Treasurer and the New Jersey Commission on Capital Budget and Planning an annual budget request, and plan for the expenditure of funds from the Bond Act for the upcoming fiscal year. The plan shall include the following information:

1. A performance evaluation of the expenditures made from the fund to date;
2. A description of the programs planned during the upcoming fiscal year;
3. A copy of the regulations in force governing the operation of programs that are financed in part or in whole by funds from the Bond Act; and
4. An estimate of expenditures for the upcoming fiscal year.

(b) Immediately following the Governor's annual budget message, the Secretary shall submit to the Legislature and to the Legislature Joint Budget Oversight Committee, or its successor, copies of the plan set forth in (a) above, with such changes that may have been required by the Governor's budget message.